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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,164	02/26/2004	Andrew Jay Bean	3638-115 (AMK)	9134
23117 7590 10/16/2007 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			EXAMINER CHIN SHUE, ALVIN C	
			ART UNIT 3634	PAPER NUMBER
			MAIL DATE 10/16/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/786,164

Applicant(s)

BEAN ET AL.

Examiner

Alvin C. Chin-Shue

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 2,9 and 11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The description as originally filed does not provide an adequate description of the single control switch, which applicant argues is not conventional and known, to enable a proper understanding of the claimed switch to allow for a proper search and the application of pertinent prior art.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bodtke et al in view of Mertz or Fulton. Bodtke fig. 6 teaches the claimed method and lift, with the exception of the teaching of an independently and simultaneously

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controlled pivoting and telescoping tower boom. Both Mertz and Fulton teach tower booms that are controlled independently and simultaneously to pivot and telescope the booms, and Mertz further teaches single switch, as understood, "the controller" or the b-directional switch that controls up and down movement, and Fulton teaches a single "go button" switch 71. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bodtke to comprise a tower boom controlled, as taught by either Mertz or Fulton, to enable the nose of his boom to follow a predetermined path that includes both a constant radius and a straight line. To prevent the extension of the tower boom until it reaches a predetermined angle 6.6 degrees from gravity would have been an obvious mechanical expediency in view of the independent and simultaneous control.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bodtke et al and either Mertz or Fulton, as applied to claim 17 above, and further in view of Rocke. Rocke teaches rotation sensors between pivotally attached main boom 115 and a tower boom 110. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a rotation sensor in lieu of his, as taught by Rocke, to determine the angle between his tower and main booms.

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Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bodtke et al and either Mertz or Fulton, as applied to claim 1 above, and further in view of Meyers. Meyers teaches a pivotal connection between a main boom and a tower boom without an upright. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bodtke to pivotally connect his main and tower booms without an upright, as taught by Meyers, for the known advantages of lifts having pivotally connected tower and main booms without uprights.

Applicant's arguments filed 8/1/07 have been fully considered but they are not persuasive. With respect to the rejection of claims 2, 9 and 11 under 35 USC 112, as stated before, applicant stated that the use of single switch for operating up and down movements is not conventional, thus the description of such unknown switch and such unknown connection to enable such movement is lacking to enable a clear understanding of the claimed invention. With respect to Mertz and Fulton, it is noted that Mertz in paragraph (0017-0019) teaches simultaneous and independent pivoting and telescoping of a boom, and Fulton in column 8, lines 17-28, column 4, lines 13-26, also teaches simultaneous and independent pivoting and telescoping of a boom. The modification of Bodtke in view of the teachings of Mertz or Fulton to comprise a tower boom that is able to simultaneously and

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independently pivot and telescope would inherently be able to follow predetermined paths including that as set forth in claim 3. It is further noted that on of such path would depend on the location of the main boom so as to either maintain or increase the stability of the vehicle, note Mertz (oo19). As vaguely disclosed paragraph 7, column 2, states that his controller is a switch, also in column 4, line 61, the second (single) switch controls up and down movements, also a single switch 131 controls up and down movements. With respect to Fulton, the activation of his go switch activates the movement of his boom including raising and lowering. With respect to claims 18 and 21, as acknowledge by applicant, and taught by Rocke, rotation sensors are conventional means for sensing an angle of a boom relative to gravity, also inclinometers are also conventional means for sensing an angle of a boom relative to gravity, and as taught by Fulton. Bodtke teaches conventional angle sensing means relative to gravity at 661 between his tower boom 602 and main boom 601 and another conventional angle sensing means relative to gravity at 662 on his tower boom.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is

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filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin C. Chin-Shue whose telephone number is 571-272-6828. The examiner can normally be reached on Monday-Friday, 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Alvin C. Chin-Shue
Primary Examiner
Art Unit 3634

ACS